

REMARKS

This paper is filed in response to the Office Action mailed March 25, 2011 (the "Office Action").

Following the amendments above, claims 80-90, 92-101, and 103-107 are pending in this application. Claims 80-90, 92-101, and 103-105 were rejected under the judicially-created doctrine of obviousness-type double patenting over U.S. Patent Nos. 5,956,484, 6,101,530, 6,161,126, 6,125,385, 6,353,850, 6,859,819, and 7,636,080. Claims 80-85, 90, 92-96, 101, and 103-105 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,908,467 to Barrett et al ("Barrett"). Claims 86-89 and 97-100 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Barrett in view of U.S. Patent No. 5,669,818 to Thorner et al ("Thorner").

Applicant has amended claims 80, 92, 95-101, and 103-105, and added new claims 106-109. No new matter is added by these amendments and support may be found in the specification and claims as originally filed.

Applicant traverses each of the rejections of the claims and respectfully requests reconsideration and allowance of all claims in view of the amendments above and the remarks below.

I. Interview Summary

Applicant appreciates the Examiner's time during the interview held on June 22, 2011 between Examiner Christopher Biagini and Applicant's representatives Carl Sanders, John Alemanni, and Bryan Foster at the United States Patent and Trademark Office. During the interview, the parties discussed the pending claims and potential additional subject matter, but no agreement was reached regarding the pending claims.

II. Claim Amendments

Applicant has amended independent claims 80 and 95 to recite "the input signal comprising markup or program code having an embedded force feedback command," "generating an output signal based on the force feedback command," and "wherein the markup

or program code is embedded in or referenced by at least one of a web page, a script, or a program.” Support may be found in the specification and claims as originally filed. For example, pages 31-36 describe markup or program code having an embedded force feedback command.

The specification describes that “[a]uthored effects can be “dynamic,” i.e., the behavior of the effect can change depending on the author’s intent and a current state or other state of the Web page” and that “[t]he dynamic nature of these effects can be achieved either through scripting (e.g. using such languages as VBScript or JavaScript) or programming (e.g., using such programming constructs as Java applets and ActiveX controls).”¹ Further, the specification states that such force effect functionality can be referenced by a web page,² which can incorporate scripts or programs.³

Applicant has amended claims 103-105 to recite a “non-transitory” computer-readable medium. The USPTO has noted that computer-readable medium claims that cover “both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation ‘non-transitory’ to the claim.”⁴ Further, the USPTO has noted that

“[s]uch an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals *per se*. The limited situations in which such an amendment could raise issues of new matter occur, for example, when the specification does not support a non-transitory embodiment because a signal *per se* is the only viable embodiment such that the amended claim is impermissibly broadened beyond the supporting disclosure.”⁵

For the purposes of this application, the term “non-transitory” is intended to encompass computer-readable media as defined within the present specification and those that would otherwise be known to one of skill in the art, but excludes transitory, propagating signals as defined in Nuijten.⁶ The specification provides multiple examples of non-transitory computer

¹ Specification, p. 24, lines 17-25.

² Specification, p. 33, lines 9-15.

³ Specification, p. 24, lines 21-25.

⁴ Subject Matter Eligibility of Computer Readable Media, signed by Director Kappos on Jan. 26, 2010.

⁵ Id.

⁶ In re Nuijten, 500 F.3d 1346, 1352, 1357 (Fed. Cir. 2007).

readable media, including RAMs, ROMs, hard disks, etc.⁷ Each of these is an example of a non-transitory computer-readable medium. Thus, claims 103-105 are each directed to patentable subject matter.

III. § 102(b) – Claims 80-85, 90, 92-96, 101, and 103-105– Barrett

Applicant respectfully traverses the rejection of claims 80-85, 90, 92-96, 101, and 103-105 under 35 U.S.C. § 102(b) as allegedly being anticipated by Barrett.

To anticipate a claim under 35 U.S.C. § 102(b), a reference must disclose each and every element of the claimed invention.⁸

Because Barrett does not disclose “receiving an input signal from a network, the input signal comprising markup or program code having an embedded force feedback command; ... and wherein the markup or program code is embedded in or referenced by at least one of a web page, a script, or a program” as recited in claim 80, Barrett does not anticipate claim 1. While Applicant does not agree with the Examiner’s position that data indicating a file size of web page received from a server is a “force feedback command,”⁹ Applicant has amended claim 80 to recite that the input signal comprises markup or program code having an embedded force feedback command. Barrett does not disclose such functionality. Barrett merely discloses that file size data may be received, but does not disclose that the input signal comprises markup or program code having an embedded force feedback command. Therefore, Barrett does not disclose “receiving an input signal from a network, the input signal comprising markup or program code having an embedded force feedback command; ... and wherein the markup or program code is embedded in or referenced by at least one of a web page, a script, or a program” as recited in claim 80 and so Barrett does not anticipate claim 80. Applicant respectfully requests the Examiner withdraw the rejection of claim 80.

Each of claims 92, 95 and 103 recite elements similar to those discussed above with respect to claim 80 and each is patentable over Barrett for at least the same reasons as claim 80. Applicant respectfully requests the Examiner withdraw the rejection of claims 92, 95, and 103.

⁷ Specification, p. 11, line 2.

⁸ M.P.E.P. § 2131.

⁹ Office Action at 23 (“comprising ‘information indicative of the size of the page’: see col. 5, line 63 to col. 6, line 2; note that the information is a “force feedback command” because it results in the production of force feedback: see col. 7, lines 34-42.”)

Because claims 81-85, 90, 93, 94, 96, 101, 104, and 105 each depend from and further limit one of claims 80, 92, or 103, each of claims 81-85, 90, 93, 94, 96, 101, 104, and 105 is patentable over Barrett for at least the same reasons. Applicant respectfully requests the Examiner withdraw the rejection of claims 81-85, 90, 93, 94, 96, 101, 104, and 105.

IV. § 103(a) – Claims 86-89 and 97-100 – Barrett in view of Thorner

Applicant respectfully traverses the rejection of claims 80-85, 90, 92-96, 101, and 103-105 under 35 U.S.C. § 102(b) as allegedly being anticipated by Barrett.

To establish *prima facie* obviousness of a claimed invention under 35 U.S.C. § 103, the Office Action must show, either from the references themselves or in the knowledge generally available to one of ordinary skill in the art, that the cited references disclose or suggest each claimed element.¹⁰

Because Barrett in view of Thorner does not disclose or suggest “receiving an input signal from a network, the input signal comprising markup or program code having an embedded force feedback command; ... and wherein the markup or program code is embedded in or referenced by at least one of a web page, a script, or a program” as recited in claim 80, from which claims 86-89 depend, claims 86-89 are patentable over Barrett in view of Thorner. As discussed above, Barrett does not disclose “receiving an input signal from a network, the input signal comprising markup or program code having an embedded force feedback command; ... and wherein the markup or program code is embedded in or referenced by at least one of a web page, a script, or a program.” Thorner does not cure this deficiency. Therefore, claims 86-89 are each patentable over Barrett in view of Thorner. Applicant respectfully requests the Examiner withdraw the rejection of claims 86-89.

Similar to claim 80, claim 92, from which claims 97-100 depend, recites elements similar to those discussed above with respect to claim 80 and is patentable over Barrett for at least the same reasons as claim 80. Therefore, claims 97-100 are patentable over Barrett in view of Thorner for at least the same reasons. Applicant respectfully requests the Examiner withdraw the rejection of claims 97-100.

¹⁰ See Graham v. John Deere Co., 383 U.S. 1 (1966), KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398 (2007).

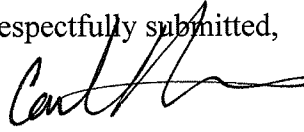
CONCLUSION

Applicant respectfully asserts that in view of the amendments and remarks above, all pending claims are allowable and Applicant respectfully requests the allowance of all claims.

Should the Examiner have any comments, questions, or suggestions of a nature necessary to expedite the prosecution of the application, or to place the case in condition for allowance, the Examiner is courteously requested to telephone the undersigned at the number listed below.

Date: July 13, 2011

Respectfully submitted,



Carl Sanders
Reg. No. 57,203

KILPATRICK TOWNSEND & STOCKTON LLP
1001 West Fourth Street
Winston-Salem, NC 27101
(336) 607-7474 (voice)
(336) 734-2629 (fax)